1891

SUPREME COURT OF THE UNITED STATES.

No. 286.

THE UNITED STATES, APPELLANTS,

vs.

JOHN WILSON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

1499

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JOHN WILSON, claimant,
vs.
THE UNITED STATES, defendant.
} For the place named "Huerto de Romualdo."

2

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this seventeenth day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of John Wilson for the place named "Huerta de Romualdo" was presented, and ordered to be filed and docketed with No. 50, and is as follows, to wit:
(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *May* 10*th*, 1852.

In case No. 50, John Wilson, for the place named "Huerta de Romualdo," the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.
(Vide page 5 of this transcript.)

SAN FRANCISCO, *January* 4, 1853.

In the same case the deposition of John Young, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.
(Vide page 9 of this transcript.)

SAN FRANCISCO, *August* 3*d*, 1853.

Case No. 50, on motion of the United States law agent, was placed on the trial docket.

4 SAN FRANCISCO, *August* 4, 1853.

Case No. 50 called; evidence read; case submitted on briefs and taken under advisement by the board.

SAN FRANCISCO, *December* 12, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 38 of this transcript.)

And the following order was made, to wit:

(Vide page 55 of this transcript.)

5 *Petition.*

To the honorable commissioners to settle private land claims in California:

The petitioner, John Wilson, respectfully shows that, in the year 1842, the alcalde of San Luis Obispo, acting under the direction and authority of Juan B. Alvarado, governor of California, gave to Romualdo a small tract of land, situate in the county of San Luis Opispo, called Huerto de Romualdo or del Chorro, containing some 1,500 or 1,600 varas square, within the boundaries established by the aforesaid alcalde.

That on the 27th day of June, A. D. 1846, the said Romualdo sold and conveyed to the petitioner the aforesaid tract of land, and that on the 28th of June, A. D. 1846, the said tract of land was surveyed and the juridical possession of it given to the petitioner by the proper authority.

That on the 10th day of July, A. D. 1846, Pio Pico, governor of California, by virtue of authority in him vested, gave a new and formal grant of the said tract of land to the said Romualdo; and that on the 11th day of July, 1846, the said Romualdo confirmed by a new deed his former conveyance to the petitioner, who, on the same day, was again put into the judicial possession by a new act of court, the sale and conveyance aforesaid being made by judicial authority and with the approbation of the governor; copies of the certificate of the governor and alcalde, proving the grant of Governor Alvarado in 1842, of the first conveyance and act of juridical possession of the grant of Governor Pico in 1846, of the second conveyance and act of juridical possession and of the approval of the governor, and also of the map of the aforesaid tract of land, are hereto annexed, marked A, with translations, marked B.

6 And the petitioner further shows, that he knows of no interfering claim; that the said land has not been surveyed by the surveyor general of the United States, but that it was surveyed by the proper authority at the time of giving the judicial possession of it, and has been since by the county surveyor of San Luis Obispo county, and that its boundaries are definite, well known, and undisputed; that from the year 1842 to the 27th day of June, A. D. 1846, the said Romualdo was in quiet, peaceful, and full possession of the said tract of land, and that since that time the petitioner has been, and now is, in the full and undisturbed possession and occupation of the land aforesaid.

The petitioner relies for confirmation of title upon the original

papers, copies of which are hereto annexed; upon the documents and minutes relating thereto, in the archives now in the possession of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the grant of the said tract of land.

By his attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office February 17th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

7 *Deposition of Pablo de Guerra.*

OFFICE OF THE BOARD OF LAND COMMISSIONERS IN CALIFORNIA,
San Francisco, May 10th, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced on behalf of the claimant, John Wilson, whose petition is No. 50 on the docket of said commissioners, and after being duly sworn, testified as follows:

The law agent of the U. S. was duly notified and attended.

1st question. What is your name, age, and place of residence?

Answer. My name is Pablo de la Guerra; my age is 32 years; I reside in Santa Barbara, and have resided in California all my life.

2d question. Are you acquainted with the signatures of Juan B. Alvarado, J. Mariano Bonillo, José Garcia, Juan Wilson, Pio Pico, José Matias Moreno, and Inocente Garcia? And if so, say whether their signatures to the papers before you are genuine, whether the papers marked "A," in claim No. 50, filed in the office of the secretary of commissioners, are correct copies of these originals.

Answer. I do not know the signatures of José Garcia, but I am acquainted with the signatures of Juan B. Alvarado, J. Mariano Bonilla, Juan Wilson, José Matias Moreno, and Inocente Garcia. Their signatures to the documents before me are genuine, and to the best of my knowledge and belief the documents themselves are genuine and originals. I have compared them with Exhibit "A," filed in claim No. 50, filed in the office of the secretary of the
8 commissioners, and find the latter to be correct copies of these originals.

3d question. What was the usage and custom of the country with respect to sale of lands by Indians, which had been granted to them by the governor? Was there any distinction, in this respect, between Indians and whites?

Answer. I know of no distinction. I have always understood that Indians had the same rights of property under the Mexican laws as white men. I have frequently known Indians to sell lands which had been granted to them, and such sales were always considered legal under the Mexican government.

Questions by U. S. law agent.

Quest. 1st. What action have you ever known to be taken by the Mexican government, which would show that said government considered sales in California by Indians legal?

Ans. I know of no action by the government or public authorities either approving or disapproving such sales.

Quest. 2d. Have you ever known any action taken, either by the public authorities in California or by people living in California, which would show that such sales by Indians were considered legal?

Ans. I know of no action taken, either by the public authorities nor by the people in regard to this matter. I know of an
9 instance where the governor of California recognized the right of an Indian to sell lands. I refer to the letter which is among the papers in this case, dated San Luis Obispo, July 11th, 1846. I have frequently known of sales made by Indians to white people, and considered by them as valid.

3d question. How many such instances have you known?

Answer. I now remember distinctly four such instances.

Question by claimant's counsel.

Quest. 1st. Whether or not sales by Indians of lands granted to them by the government made as freely and as generally in California as such sales were made by whites in proportion to the relative number of the two kinds of grants?

Ans. They were made as freely and as generally.

(Signed) PABLO DE LA GUERRA.

The law agent present.

Sworn to and subscribed before me this 10th of May, 1852.

(Signed) HARRY J. THORNTON, *Com'r.*

Filed in office May 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

10 *Deposition of John Young.*

SAN FRANCISCO, *Jan'y* 4, 1853.

On this day, before Com'r Harry J. Thornton, came John Young, a witness in behalf of the claimant, John Wilson, (petition No. 50,) and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

My name is John Young; my age is 28 years; I reside in Santa Clara county, and have lived in California 9 years. I know the tract of land called "Huerta de Romualdo" o "del Chorro." It is in the county of San Luis Obispo. John Wilson has occupied it since the early part of 1846; he has had horses and cattle on it, and has had a garden on it; he occupies it at the present time, and has a house on it.

(Signed) JOHN YOUNG.

U. S. law agent present.

Sworn to and subscribed before me this 4th January, 1853.
(Signed) HARRY J. THORNTON, *Com'r.*

Filed in office January 4th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

11 Espediente de D'n Juan Wilson, del parage conocido con el nombre del "Chorro" ó "Huerta" de Romualdo q'e se haya al N. O., de este pueblo en distancia de una y media leguas, año de 1846.

12 Juan B Alvarado, coronel de la milicia, ansiliar del departamento de Californias.

Certifico que seindo gobernador de este departmento en el año de 1842, mande orden en dicho tiempo al eucargado de la mission de S'n Luis Obispo entonces D'n Mariano Bonilla, para que de los terreno Valdios pertenecientos à dicha mision repartiese proporcionalmente à algunas de los Yndigenas del espesado estable cimiento conforme à los meritos y capaaeidad de cada uno las suertes de tierra que creyere coriveinente, poniendo los inmediatam'te en posecion de el los.

En consecuencia de esta disposicion por su cumplimiento abño dicha ampleado de hacerto verificado, resultando agraciado el Indegina Romnaldo con el parage llamado el chorro con la estencion se ha manteindo hasta la fecha queta y pasificamente. Yà pidim'to del entersado para los fines que le convengar le doy el presente en Monterey à dos de mayr de mil ocho cientos cuarenta y seis.

JUAN B. ALVARADO.

El q'e surcibe certifico: q'e en el reparto q'e hize de suertes do tierra en el establicimiente de S'n Luis Obispo p'r orden del gobierne en el año de 842 à los Yndigenas del miemo establecimiento à Romualdo le señale p'r propieda sulla la suerte xue ocupaba en el nombre de su huerta en el arroyo del chorro señalandale p'r termino y lindero p'r la parte del estable oim'to el vertiente de la agua q'e riega d'ha tierra, y p'r la parte opuesta, la renconada, siendala estencion de mil v's poco mas ó menos de longitud del SE. à NE., y tres cientos de latitud de SO. à NE., culta huerta p'r testimonio de los demas
13 indigenas hace mucho tiempo q'e la ocupa el espresado Romualdo y p'r tal condicion de la señale como sulla habiendo afrecido el recobrar del gubierno su respectivo titulo y p'a que conste à pedim'te del interesado lo doy el presente en S. Luis Obispo à 20 de Junio de 1846.

J. MAR'NO BONILLA.

En el pueblo de San Luis Obispo, d'l la Alta California, á los veinte y siete dias del mes de Junio del año de mil ochocientos cuarenta y seis ante mi Victor Linares, juez de paz suplente de d'ho pueblo y su demarcacion, y los testigos de asistencia con quienes actue en la forma establecida p'r falta de escribano publico, fueron presentes el indigena Romualdo y D'n Juan Wilson cuyas personas doy feé conosco

y digo el primero p'e p'r si y á nombre de sus herederos y sucesores y de quien de ellos hubiere titulo vaz y fama en cualesquiera manera da en venta legal y enagenacion perpetua á D'n Juan Wilson un terreno q'e le pertenece en propiedad en estencion de quinientas ó seis cientos varas conocido con el nombre de Huerta de Romualdo y se haya al N. V. de este pueblo entre las tierras de el y las de D'n Juan Wilson, y aunque no presente titulo de adquicision y propiedad p'r. constar del testimonio de hombres de bieu ser del referido indigena la enunciada huerta declara que esta libre de todo gravamen publico, perpetuo, temporal, especial, general, tacito y espreso y como tal se lo vende pa. p'e lo disfrute gozé, cambie, luagene y disponga de el como de cosa suya adquirida con legitima y justo titulo, dandose el otorgante p'r recibido de la cantidad de ciento cincuenta pesos valor de d'ho; terreno y sobre no parecer de presente la entrega renuncia las leyes de ella las de su prueba y pago del recibo como en ella se contiene y desde hoy en adelante se desapodera, desiste quita, y
14 aparta del dominio y posecion señorio titulo recurso ó cualesquiera derecho que le compete al anunciado terreno y lo renuncia para á Don Juan Wilson para q'e disponga de el como de cosa propia y le canfia poder irrevocable con libre, fruca y general administracion obligandose el otorgante á q'e esta venta le sera cierta, segura y efectiva y nadie le inquietara ni movera pleito alguno sobre su propiedad y posecion ni contra el terreno aperecerá grabamen alguno yá la firmeza y validacion de todo lo repetido obliga el otorgante sus bienes presentes y futuros y con ellos se somete al fuero y jurisdiccion de los Señores Jueces q'e de sus causas devau conocer como p'r sentencia difinitiva con sentida y pasada en autoridad de cosa jusgada y p'r tal la recibe. En cuyo testimonio asi lo otorgo y no firmo p'r no saber lo hacer y solamente pone una señal de cruz, siendo testigos instrumentales D'n José María Carrasco D'n Nicolas Carpio y D'n Tomas Herrera de q'e ya el referido juez doy feé.

ROMUALDO. +
VICTOR LINARES.

De assa.:
J. MAR'NO BONILLA.
JOSÉ GARCIA.

Se estendio el presente documento en papel comun p'r falta del sellado correspond'te f'ha ut supra.

LINARES.

SAN LUIS OBISPO,
Junio 28 *de* 1846.

De conformidad con lo pedido en la presente instancia pa. el 29 del corriente previa citacion de los colindantes se le dara al interesada la posecion juridica q'e solicitara.
Ya el Juez de Paz suplente
15 de S'n Luis Obispo y su demarcacion asi lo decretó y firmó.

LINARES.

S'or Juez de Paz de S. Luis Obispo:

Juan Wilson vecino del partido de Santa Barbara ante V. como meyor procede paresca y digo; que en virtud de obtener en propiedad el terreno del chorro como consta por la escritura de venta q'e debidamente acompaño y tambien los documentos que á falta de titulo acreditan q'e esta concedido al yndigena Romualdo (quien á mi me vendio) hace ya algunos años; so-

licito V. tenga á bien darme la posecion juridica estandome el dia y hora en q'e deba verificar se, de lo cual recibirè gracia que peso, &c.

San Luis Obispo, Julio 28 de 1846.

JUAN WILSON.

En San Luis Obispo á los veinte y nueve dias del mes de Junio del año de mil ochocientos cuarenta y seis scindo presente D'n Juan Wilson se hico saver el auto anterior y digo lo oye y es conforme y lo asente p'r diligencia de q'e doy feé con des testigos de asistencia p'r falta de escribano publico.

VICTOR LINARES.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

En el mismo dia se paso esta por escrito á D'n Fran'co Villa como encargado del terreno del Sor. Oliviet qu'e colinda con el parage conveido con nombre del chorro p'a q'e presencia las medidas q'e se van á tomar y lo asente p'r diligencia q'e firmé con los de asistencia.

VICTOR LINARES.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

En el Pueblo de San Luis Obispo a los veinte y nueve dias del mes de Junio del año de mil ochocientos cuarenta y seis se presente D'n Francisco Villa en complimiento á la citacion q'e se le hiso el dia anterior y lo asente por diligencia q'e rubrique.

16 En el mismo dia mes y año. Yo el juez de paz suplente de San Luis Obispo acompañado de los de mi asistencia y calindantes y á citados pasamos al parage conveido cone el nombre de Chorro ó Huerta de Romualdo que se halla como legua y media de distancia al N.O. del edificio principal de San Luis Obispo con objeto de proceder á las medias del torreno y lo assente p'r diligencia q'e firme con los de assistencia.

VICTOR LINARES.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

En el parage conocido con el nombre del Chorro ó Huerta de Romnaldo en el mismo dia mes y año yo el juez de paz suplente de San Luis Obispo y su demarcacion y los de mi asistencia siendo presente D'n J. Wilson hice medio un cordel con objeto de á las medidas del torreno y al efecto de medir un codel de veinte y cinco varas castellarias y en sue estremos se ataendos estaçoa, y p'r su constancia lo puse p'r diligencia que firme con los de assa.

VICTOR LINARES.

Assa: JOSE GARCIA.
Assa: ENRIQ'E TOMSON.

En el mismo parage dia mes y año yo el juez de paz suplente de San Luis Obispo y su demarcacion acompañado de los de asistencia

p'r faltar un pereto agrimensore dispuse nombrar de los con currentes dos medidores cordelores y fueron nombrados D'n Vicente Feliz y D'n Ynvente Garcia los cuales aceptando el encargo suraron p'r Dios Ntr'o S'or y la Synta Cruz desempeñado filemente segun su saber y entendere. Ylo asente p'r diligencia q'e firme con los de asistencia.

VICTOR LINARES.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

17 En el mismo parage dia mes y año á continuacion y el juez de paz suplente de San Luis Obispo y su demarcacion acompañado de los de asistencia y con currentes yo citados siendo presente D'n Juan Wilson pasamos á un ruicon q'e demuestra el diseño y previo el reconocimiento de los instrumentales q'e abran en el espediente y q'e justifican haber sido de la propiedad de romualdo el terreno indicado despues de demarcado aquel punto con unos alisos en q'e D'n Juan Wilson latro una cruz y estampo su marca se comenzo la medida, tomando los medidores el cordel p'r sus estremos y estacos midieron de N. O. á S. E. p'r toda la orilla del arrallo del choro á llegar á un aliso q' sirve de lindero al S'or Alibret en donde se midieron cuarenta y tres cordeles y se demarco este punto con una cruz q'e formr Wilson en el mismo arbol y su marca que á presencia de los concurrientes tambien la estampó en el mismo lugar. De alli se tiro el cordel p'r al rumbo S. O. hasta llegar al pié del serro q'e llaman de romualdo y resultaron diez y nueve cordeles siendo demarcado este punto p'r un encino grande en donde el presitado Wilson estampo su marca y formo una cruz señal de lindero p'r aquel punto en advertencia q'e en la linea recta q'e hay de el aliso citado en la primera medida hasta el meucionada encino, se encuentran el nacimiento del aguaz del chorro y un aliso q'e tambien esta marcado como los demas. En sequida se continue la medida por el rumbo H. hasta terminar con el lindero de otro terreno tambien perteneciente á Wilson y se midieron cuarenta y cuatro cordeles. De alli se siguio midiendo por el rumbo N. E. se terminó con el punto de donde se comenzaron las medidas en cuyas distancia se contaron cuico cordeles con lo cual se concluy eron las medidas y senalados los terminos y linderos hagi un augulo de ciento y mee cordeles q'e com-
18 ponen dos mil siete cientas setenta y cinco varas castellanas y á fui de q'e D'n Juan Wilson concluido este octo, manifestare ser el dueño y s'or del terreno; lo tome p'r la mano y en voz clara le dige; lu nombre de la nacion Mejicana doy á V. posecion furidien del terreno que tiene comprodo y q'e ahora se le ha medido y le mande que hiciese alguna demostracion de haber ad quirido el dominio util y directo y con esto la propiedan del terreno y el como en demostracion manifestando ser el unico S'or y Dueño, cabo la tierra, arranco Yerbas y tiro piedras con lo q'e se concluyo el acto y lo firme con los de assistencia.

VICTOR LINARES.

Ass'a: JOSÉ GARCIA.
Ass'a: ENRIQUE TOMSON.

SAN LUIS OBISPO, *Junio* 29 *de* 1864.

De buelbase estas diligencias originales al interesado p'r q'e haza de ellos el uso q'e le convenga como testimonio de adquisicion de propriedad y tomese razon en el libro respectivo.

LINARES.

SAN LUIS OBISPO, *Junio* 30 *de* 1846.

Atendido el acto anterior con esta misina f'ha se debalbio a D'n Juan Wilson el espediente en 9 figas utiles y lo asente p'r diligencia q'e rubrique.

Queda tomada razon el libro respectivo en los figas 17, 18, 19, y 20.

[SEAL.] VICTOR LINARES.

Pico Pico, gobernado constitucional del departamento de Californias:

Por cuanto indigena Romualdo ha hecho constar que hace bastante tiempo que legalmente posee un terreno para labor de
19 quinientas varas en cuado en este lugar el que ád quirio por buena consecion y no teniendo documento que lo acredite para en todo tiempo justificar su derecho, usando de las facultades que me son conferidas á nombre de la nacion mijicana he venido en conformala la consecion de el referido terreno declarandale la propiedad por las presentes letras bajo las condiciones siguientus:

1o. Podra cercarlos quinientos vasas de terreno que de nuevo se le adjudican sin perjudicar los caminos y servidumbres, lo disfrutara libre y esclusivamente, destinandolo al uso ó cultivo que mas le acomode.

2o. Solicitara del juez respectivo le de la posecion juridica en virtud de este despacho p'r el que se demarcaran los correspondientes linderos que ser an señalados con los mojoneras necessarias.

En consecuencia mando q'e teniendore el presente titulo por pirme y valedro se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en el Pueblo de S'n Luis Obispo en este papel comun por falta de sellado, diez de Julio de mil ochocientos cuarenta y seis.

PIO PICO.

JOSE MATIAS MORENO, *S'rio Int'o.*

20

(Here follows map, page 21.)

22 En San Luis Obispo á los anco dias del mes de Julió del año de mil y ochocientos cuarenta y seis. Por ante mi Moscente Garcia Juez Auxiliar de d'ho Pueblo y su demarcacion y los testegis de asistencia con quienes actno en la forma establecida fue presente el Yndigena Romnaldo á quien doy feé conozco y digo, ql. habiendo adquirido del Gabierno Departamental el litulo de la Huerta de su nombre, en virtud de haberle enagenado en venta ql. hiso de el á D'r

Juan Wilson como consta p'r la Escritura respectiva ql. presente, traspara d'ha Huerta al referido D'r Juan Wilson p'r mas seguridad de la Venta hecha. Y para q'l conste lo asente p'r diligenciá q'l fórme con los de asisteneia no haciendolo el esprerado Romnaldo p'r no sanerlo hacer.

INOCENTE GARCIA.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

SAN LUIS OBISPO,
Julio 11 *de* 1846.

De conformidad con lo pedido p'r el dia 12 del corriente se le dara al interesado la posecion juridica ql. solicita.

Yo el juez de paz auseliar de S. Luis Obispo y su demarcacion asi lo decrete firmè.

GARCIA.

SOR. JUEZ DE PAZ: Juan Wilson vecino del partido de S'a Barbara ante V. como mejor pro ceda prezco y dizo, ql. en virtud de dener comprado al Indigena Romualdo et terreño ql. demuestran el titulo y Diseño ql. devidameto acompaño á mas de la escriturо de Venta y traspaso de d'ho titulo hecho á mi p'r el referido Indigena solicito tenga Va á bien darme la posecion juridica del mencinado terreno sirviendose citasme el dia y hora en ql. debaser. Por tanto A. V. suplico accedea á mi favor gracia que espero, despensaido este papel comun por falta de sellado.

23 San Luis Obispo, Julio 11 de 1846.

JUAN WILSON.

En San Luis Obispo á los once dias del mes de Julio año mil ochocientos cuarenta y seis, siendo presento D'r Juan Wilson se le hiso saun el acto anterior y digo lo oye y es conforme lo asente p'r diligencia de que doy fee con dos testigos de asistencia p'r falta de escribano.

INOCENTE GARCIA.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

En el parage conocido con el nombre de la Huerta de Romualdo á los dose dias del mes de Julio del año de mil y ochocientos cuarenta y seis. Yo el juez de paz ausilar de la demarcacion de San Luis Obispo, acompañado de los de mi asistencia hice medir un cordel con objeto de proceder á los medidas del terreno. Y al efecto se midio un cordel de veinte y cinco varas castellañes y en sus estremos seataron dos estacas. Y por su constancia lo puse p'r diligencia ql. firme con los de asistencia.

INOCENTE GARCIA.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

En el mismo parage dia mes y año yo el juez de paz de San Luis Obispo y su demarcacion acompañado de los de asistencia p'r faltar un perito agrimensor dispuse nombrar de los con currentes dos medidoses cordelesos y fueron nombrados D'r Bicente Feliz y D'r Mercurial Garicia los cuales aceptando el encargo, juraron p'r Dios N'tro S'or y la Santa Cruz desempenado fiel y verdaderamente segun su saver

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y entender y lo asente p'r dilisgucia ql. firmé con los de asistencia.

INOCENTE GARCIA.

Assa: JOSE GARCIA.
Assa: ENRIQUE TOMSON.

24 A continuacion en el mismo parage dia mes y año yo el juez de paz de San Luis Obispo y su demarcacion ácompañado de los de asistencia y concurrentes yo citados presente Dn. Wilson pasamos á un ruieonqe. se encuentra demarcado en el diseño qe. pertenecia al a Yndigén Romualdo y qe. d'hora es de la propiedad de Dn. Juan Wilson cuyo queda demarcado con un alisal qe. sirve de lindero el otn. terreno tambien de la propiedad del referido Wilson pa. comensar las medidas y al efecto los nombrados medidores cordeleros tiraron el cordel y seguiendo en direccion al S. E. pr. toda la orilla del arroyo qe. llaman del chorro se medieron hasta llegar á un aliso que queda marcado con una Cruz labrada con acha en el mismo arbol cuarenta y tres cordeles, y continuando las mededas desde dicho qunto al rumbo S. V. á llegar al pie del serro que llamen de remualdo se medieron diez y Nueve Cordeles, quedando demarcado este punto pr. un encuio qe. servia de lindero hiso una Cruz y de alli antes de seguir las medidas pr. otro rumbo valvivos atras pr. la misma linea y llegamos á un aliso en donde esta el nacimiento del aguage del chorro y sllí mandé á Don Juan Wilson que hiciere otra Cruz que demostrara ser aquel lindero con las tierras del Yndio Pedro Maria y la hizo en sequlda volvimos de Nuevo al Encino y tiraron los medidores el cordel á linea recta pr. el rumbo N., hasta llegar á una piedra qe. esta en donde siempre ha habitado Romualdo y se medieron treinta cordeles se continuo midiendo pr. el rumbo N. V., hasta llegar á un ruicon que tiene varios alisos que sirve de lindero al rancho de los Osos y se medieron catorce cordeles; de alli se medio pr. el rumbo N. E., hasta llegar al punto donde se comengo la medida y se contraron cinco cordeles con lo cual fueron concluidas las medidas y señalados los terminos y
25 linderos del terreno y á fin de qe. Dn. Juan Wilson concluido este acto manifestarse ser el s'or y dueño absoluto del terreno lo tome de la mano y en voz Clara le digo, en nombre de la nacion Mejicana doy á V. posesion juridica del terreno qe. tienc comprado y que ahora se le ha medido y le mande que hiciese alguna demostracion, de señorio y de haber adquirido el dominio util y directo y el como demostracion de haber adquirido la propiedad del mencionado terreno manifestando ser el unico s'or y dueño cabo la tierra, arranco yerbas y tavi piedras con le qe. se concluyo el acto qe. firme con los de asistencia, de que doy fee.

INOCENTE GARCIA.

Ass'a : JOSE GARCIA.
Ass'a : ENRIQUE TOMSON.

San Luis Opispo, Julio 12 de 1846.

Debuelbanse estas diligencias originales al interesado pr. qe. haga al uso qe. le convenga como testimonio de adquisicion de propiedad y tomese razon en el libro correspondiente.

GARCIA.

San Luis Obispo, *Julio* 13 *de* 1846.

Atendido el acto antecedente con esta misma f'ha se debolvio á Dn. Juan Wilson el espediente en q. fojas utiles y lo asente pr. diligencia.

SOR'A DOÑA RAMONA CARILLO.

San Luis Obispo, *Julio* 11 *de* 1846.

Mi estimada Prima: Yo que la cortedad del tiempo y mis ocupaciones me privan de la satisfaccion de ir á hacer a V. una visita le dirigio la presente con el principal objeto de saludarla, afectuosamente deseandole completa salud en union de toda, la familiá ayunto a V. egualmente para que se sirva entregado á Dn. Juan el ti-
26 tulo de las tierras que compro al Indio Ramualdo que va acompañado á la escritura de venta y tendra V. á bien advertirle á Dn. Juan que le estendio á favor del Yndio por que asi me parecia prudente por lo que hara que el referido Romualdo lo traspasa en su favor con una diligencia que ponga el juez, pues esto no es mas de una mera formalidad.

Deseo se conserve p. buena y que disponga del afecto sincero que le profesa su af'to primo.

9. S. P. PIO PICO.

Filed in office Dec. 29th, 1852.

GEO. FISHER, *Sec'y.*

27

28 *Translation.*—"*B.*"—*Titles, sale, and juridical possession.*

Juan B. Alvarado, colonel of auxiliary militia of the department of California:

I certify that in the year 1842, being governor at that time, I ordered the person in charge of the mission of San Luis Obispo, then Don Mariano Bonilla, to distribute to several of the Indians of said establishment, from the vacant lands belonging to that mission, such separate parcels of land as he might deem proper, proportioning them to the merits and abilities of each, and putting them in possession immediately.

In consequence of this order, said employé reported that he had complied with it, and that to the Indian Romualdo had been granted the place called the Chorro, in extent, that which said Senor Bonilla marked out for him in quiet and peaceable possession, of which he has remained up to this date, and at the request of the interested party, for the purposes which it may serve, I give this in Monterey on the second of May, one thousand eight hundred and forty-six.

JUAN B. ALVARADO.

I, the subscriber, certify that in the distribution which I made of separate pieces of land in the establishment of San Luis Obispo, by order of the government, in the year 1842 to the Indians of that establishment, I assigned to Romualdo as his property the piece of ground which he occupied by the name of his garden on the arroyo of the Chorro, designating as his boundary on the side of the establishment, the source of the stream which waters said land, and on the

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other side the angle (formed by the hills,) its extent being one
29 thousand varas long, a little more or less, from SE. to NW.,
and three hundred in breadth, from SW. to NE.; which garden, according to the testimony of the other Indians, he, the said Romualdo, has occupied for a long time, and for this reason it was assigned to him as his own, having offered to obtain from the government the corresponding title.

And in testimony I give this, at the request of the party interested, in San Luis Obispo, on the 20th of June, 1846.

MARIANO BONILLA.

"B."

In the pueblo of San Luis Obispo, in Upper California, on the twenty-seventh day of the month of June, in the year one thousand eight hundred and forty-six, before me, Victor Linares, provisional justice of the peace of said puebla and its demarcation, and the witnesses of assistance, with whom I act in the established form for want of a notary public, appeared the Indian Romualdo and Don Juan Wilson, which persons I certify to know, and the former said that for himself and in the name of his heirs and successors, and of whoever of them might have title, voice, and claim in any manner, he grants, in legal sale and perpetual, alienation, to Don Juan Wilson, a land which belongs to him in fee, in extent five or six hundred varas, known by the name of "Huerta de Romualdo," and is situated NW. of this pueblo, between its lands and those of Don Juan Wilson; and though he presents no title of grant and ownership, yet it appears from the testimony of honest men that the said garden is the property of the aforementioned Indian, and that he declares that it is free from all encumbrance, whether public, perpetual, or temporal, special or general, tacit and expressed, and as such he sells it, that (the
second party) may enjoy, exchange, alienate, and dispose of
30 it as his own acquired by just and lawful title, the vendor acknowledging that he has received the sum of one hundred and fifty dollars, the value of said land. And the delivery not being made in pursuance, he renounces the laws respecting it and those concerning the proof of its payment and receipt, and from this time forward he releases, desists, retires, and withdraws from the dominion and possession the ownership, title, recourse, or whatever right he may have in the aforesaid land, and he renounces and transfers it to Don Juan Wilson, that as his own he may dispose of it. And he confers on him irrevocable power, with free, full, and general administration, the vendor obliging himself that this sale shall be certain, sure, and effective, and that no person shall molest him or enter suit against his ownership and possession, nor shall any encumbrance appear against the land. And for the legality and validity of this, the vendor binds all his property in present possession or which he may hereafter obtain, and he submits himself with it (the property) to the laws and jurisdiction of the judges who may have cognizance of such cases as a definitive sentence consented to and passed with the authority of res judicata; and as such he receives it.

In testimony of which he acknowledges this and did not sign, because he did not know how, but made a cross, the witnesses to the instrument being Don José Maria Carrasco, Don Nicolas Carpio, and Don Tomas Herrera, to which I, the aforementioned justice, certify.

(Signed) ROMUALDO. his + mark.

(Signed) VICTOR LINARES.

Ass't'g witnesses:

(S'g'd) JOSE GARCIA.

(S'g'd) J. MARIA BONILLA.

This document was made out on common paper for want of
31 that of the corresponding stamped. Date as above.

(Signed) LINARES.

"*B.*"

SAN LUIS OBISPO, *June 28th*, 1846.

In conformity with the request contained in the present instance, on the 29th inst., the coterminous neighbors (colindates) being previously summoned, the juridical possession which he solicits will be given to the party interested.

I, the justice of the peace (provisionally) of San Luis Obispo and its demarcation, thus decreed and signed.

(Signed) LINARES.

To the justice of the peace of San Luis Obispo:

Juan Wilson, resident in the district of Santa Barbara, in the most proper manner appears and represents that having obtained the ownership of the land of the Chorro, as appears by the act of sale which he duly transmitted herewith, as well as the documents which for want of a title, prove that it was granted to the Indian Romualdo (who sold it to him) some years since, he prays you will see fit to give him the juridical possession, naming the day and hour on which to verify it, by which he will receive favor, which he swears, &c., &c.

San Luis Obispo, June 28, 1846.

(Signed) JUAN WILSON.

In San Luis Obispo, on the twenty-ninth day of the month of June, one thousand eight hundred and forty-six—present Don Juan Wilson—I informed him of the preceding order, and he acknowledged notice, and I noted it officially, which I certify with the two assisting witnesses for want of a notary public.

32 (Signed) VICTOR LINARES.

Ass't'g witnesses:

(S'g'd) JOSE GARCIA.

(S'g'd) ENRIQUE TOMSON.

On the same day written summons were sent to Don Francisco Villa, as in charge of the land of Señor Olivet, which adjoins the place called by the name of Chorro, to be present at the measurements which are to be made, and I noted it officially and signed with the assisting witnesses.

(Signed) VICTOR LINARES.

Ass't'g witnesses:

(S'g'd) JOSE GARCIA.

(S'g'd) ENRIQUE TOMSON.

In the pueblo of San Luis Obispo, on the twenty-ninth day of the month of June, in the year one thousand eight hundred and forty-six, Don Francisco Villa presented himself in compliance with the summons sent him on the day previous, and I noted it officially, and signed in rubric.

(Rubric of Linares.)

On the same day, month, and year, I, the provisional justice of the peace of San Luis Obispo, accompanied by the assisting witnesses and coterminous neighbors (colindantes) before named, went to the place known by the name of the Chorro or garden of Romualdo, which is situated about one league and a half NW. of the principal edifice of San Luis Obispo, for the purpose of proceeding to measure the land, and I noted it officially, and signed it with those of my assistance.

(Signed) VICTOR LINARES.

Ass't'g witnesses :
(S'g'd) JOSE GARCIA.
(S'g'd) ENRIQUE TOMSOM.

33 In the place known by the name of Chorro or Huerta de Romualdo, on the same day, month, and year, I, the provisional justice of the peace of San Luis Obispo and its demarcation—present Don Juan Wilson—caused to be measured a cord for the purpose of measuring the land, and a cord was measured twenty-five varas long, and two stakes tied to its extremities, and in testimony I made official note of it, which I signed with assisting witnesses.

(Signed) VICTOR LINARES.

Ass't'g witnesses :
(S'g'd) JOSE GARCIA.
(S'g'd) ENRIQUE TOMSON.

In the same place, day, month, and year, I, the provisional justice of the peace of San Luis Obispo and its demarcation, accompanied by assisting witnesses for want of a provisional surveyor, I decided to appoint from the bystanders two measuring rope-bearers, and those appointed were Don Vicente Feliz and Don Inocente Garcia, who accepting the office made oath by God our Lord and the holy cross to discharge its duties faithfully to the best of their knowledge and understanding. And I made official note of it, which I signed with the assisting witnesses.

(Signed) VICTOR LINARES.

Ass't'g witnesses :
(S'g'd) JOSE GARCIA.
(S'g'd) ENRIQUE TOMSON.

In the same place, day, month, and year, I, the provisional justice of the peace of San Luis Obispo and its demarcation, accompanied by the assisting witnesses and other persons aforesaid—present Don

Juan Wilson—went to the angle (of the hills) shown in the
34 map, and after examining the instruments which go with the record of proceedings, (espediente,) and prove this land to have been the property of Romualdo, having marked that point with some sycamores on which Don Juan Wilson carved a cross, and stamped his mark, the measurement was commenced, taking the cordel by its extremities and going from NW. to SE. along the bank of the Arroyo del Chorro forty-three cordels, to a sycamore which is the boundary of Señor Olivet, and it was marked with a cross which Wilson carved, and his mark, which he also stamped on it in presence of all the bystanders; thence drawing the cordel SW. (19) nineteen cordels to the foot of the cerro called that of Romualdo, this point being marked with a large oak, on which the aforesaid Wilson stamped his mark and carved a cross, designating it as a boundary on that side. It is to be observed that a right line from the sycamore where the first measurement ended to the said oak passes through the source of the running stream of the Chorro, and a sycamore, also marked as the others; thence continuing the measurement N. to terminate with the boundary of another piece of land belonging to Wilson, forty-four cordels distant; thence NE. five cordels to the place of beginning; with which the measurements were concluded, and the boundaries designated as being in the aggregate one hundred and eleven cordels long or two thousand seven hundred and seventy-five Spanish varas. And that Don Juan Wilson might manifest himself to be lord and owner of the land, I took him by the hand and in a loud voice said to him, In the name of the Mexican nation I give you juridical possession of the land which you have purchased, and which has just been measured; and I directed him to make some
35 demonstrations of having acquired the useful and direct dominion, and with it the ownership of the land; and he, showing himself to be sole lord and owner of it, dug up earth, pulled up grass, and threw stones, with which the act was completed, and I signed with assisting witnesses.

(Signed) VICTOR LINARES.

Ass't'g witnesses:
(S'g'd) JOSE GARCIA.
(S'g'd) ENRIQUE TOMSON.

SAN LUIS OBISPO, *June 29th*, 1846.

Let these original official papers be given to the party interested, to make such use of them as he may see fit, in testimony of acquisition of ownership, and let them be entered in the proper book.

(Signed) LINARES.

SAN LUIS OBISPO, *June 30th*, 1846.

In compliance with the foregoing order, on this day, this record of proceedings (espediente) was delivered to Don Juan Wilson, on 9 written leaves, and I made a note of it officially, which I signed in rubric.

(Rubric of Linares.)

It has been registered in the proper book, on folios 17, 18, 19, and 20.
(Signed) VICTOR LINARES.

36 B.

{ Gov't of the Dep't of Cal'a. }

Pio Pico, constitutional governor of the department of California :

Whereas the Indian Romualdo has made it appear that for a long time he has legally owned a piece of cultivated land, of five hundred varas square, in this place, which he acquired by a proper grant, and as he has no document to prove it, in order to justify his right in all future time, using the powers which are conferred on me in the name of the Mexican nation, I have confirmed the grant of said land, declaring to him the ownership, by these presents, under the following conditions, viz.:

1st. He may enclose the five hundred varas of land which are again granted him, without prejudice to the roads and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as he may see fit.

2d. He will request the proper magistrate to give him juridical possession, in virtue of this order, by whom the corresponding boundaries will be marked out, which will be designated by the necessary landmarks.

In consequence, I order that, the present title being held as firm and valid, it be registered in the proper book, and delivered to the interested party for his security and other purposes. Given in San Luis Obispo, on this common paper for want of stamped, on the tenth of July, one thousand eight hundred and forty-six.

(Signed) PIO PICO.

37 JOSE MATIAS MORENO, *Secretary*.

B.

In San Luis Obispo, on the 11th day of the month of July, in the year one thousand eight hundred and forty-six, before me, Inocente Garcia, auxiliary magistrate, and the assisting witnesses, with whom I acted in the established form, appeared the Indian Romualdo, whom I certify I know, and said that, having acquired from the departmental government the title of the fruit garden called by his name, and he having alienated it by sale to Don Juan Wilson, as appears by the document which he presented, he transfers said title to the before mentioned Don Juan Wilson for the greater security of the sale made ; and in testimony I made official note of it, which I signed, with the assisting witnesses, Romualdo not doing so as he did not know how to sign.

(Signed) INOCENTE GARCIA.

Ass't'g witnesses :

(S'g'd) JOSE GARCIA.

(S'g'd) ENRIQUE TOMSON.

38 B.

SAN LUIS OBISPO, *July* 11*th*, 1846.

In conformity with this request, on the 12th inst. the juridical possession which he solicits will be given to the party interested.

I, the auxiliary justice of the peace of San Luis Obispo and its demarcation, thus decreed and signed.

(Signed) GARCIA.

To the justice of the peace:

Juan Wilson, a resident of the district (partido) of Santa Barbara, before you, in the most proper manner, appears, and represents that in virtue of having purchased of the Indian Romualdo the land shown by the title and map, which he duly transmits herewith, as also the act of sale and transfer of said title to him by the afore-mentioned Indian, he requests that you will have the goodness to give him the juridical possession of said land, naming the day and hour on which it ought to take place.

Therefore he prays you to accede to his request, a favor which he expects, excusing this common paper for want of stamped.

San Luis Obispo, July 11, 1846.

(Signed) JOHN WILSON.

In San Luis Obispo, on the eleventh day of the month of July, one thousand eight hundred and forty-six, present: Don Juan Wilson, I informed him of the foregoing order, and he acknowledged notice, and I noted it officially, which I certify with two assisting witnesses for want of a notary.

(Signed) INOCENTE GARCIA.

Ass't'g witnesses:

(S'g'd) JOSE GARCIA.

(S'g'd) ENRIQUE TOMSON.

39 In the place known by the name of La Huerta de Romualdo, on the 12th day of the month of July, in the year one thousand eight hundred and forty-six, I, the auxiliary justice of the peace of the demarcation of San Luis Obispo, accompanied by my assisting witnesses, caused to be measured a cord for the purpose of making the measurement of the land, and a cord was measured twenty-five Spanish varas long, and at its extremities two stakes were tied, and in testimony I noted it officially, which I signed with those of my assistance.

(Signed) INOCENTE GARCIA.

Assisting witnesses:

(S'g'd) JOSE GARCIA.

(S'g'd) ENRIQUE TOMSON.

In the same place, day, month, and year, I, the justice of the peace of San Luis Obispo and its demarcation, accompanied by assisting witnesses, there being no professional surveyor, I decided to name from the bystanders two measuring rope bearers, and those appointed were Don Vicente Filiz and Don Mercurial Garcia, who, accepting the office, made oath by God our Lord and the Holy Cross

to discharge its duties faithfully and truly according to their knowledge and understanding, and I made official note of it, which I signed with those of my assistance.

(Signed) INOCENTE GARCIA.

Ass't'g witnesses:
(S'g'd) JOSE GARCIA.
(S'g'd) ENRIQUE TOMSON.

40 In continuation, in the same place, day, month, and year, I, the justice of the peace of San Luis Obispo and its demarcation, accompanied by those of my assistance and other persons aforementioned, Don Juan Wilson being present, we passed to a corner marked on the map, which did belong to the Indian Romualdo, and which now pertains to Don Juan Wilson, which point was designated by a sycamore, which serves as a bound, with another piece of land also belonging to Wilson, and the measurers drawing the cordel in direction to the SE., along the bank of the arroyo, called that of the Chorro, forty-three cordels to a sycamore, marked with a cross-cut with an axe on the tree; thence continuing the measurement SW. to the foot of the cerro, called that of Romualdo, nineteen cordels, this point being marked by an oak, which serves as a bound, on which a cross was carved; then, before measuring in another direction, we went back on the main line to a sycamore, which is at the source of the running water of the Chorro, and I directed Don Juan Wilson to make there another cross, which should show that place to be a boundary with the lands of the Indian Pedro Maria, and he did so. We then returned to the oak, and the measurers drew the cordel in a straight line northerly to a rock, where Romualdo has always dwelt, distant thirty cordels; thence the measurement was continued NW. fourteen cordels, to an angle formed by the hills, where are several sycamores, which serves as a boundary with the rancho of Los Osos; thence five cordels to the place of beginning, with which the measurement was finished, and the limits and boundaries marked; and in order that Don Juan Wilson, to finish this act, should show himself to be the absolute lord and owner of the land, I took him by the hand, and, in a loud voice, said to him, in the name of the Mexican
41 nation, I give you judicial possession of the land which has just been measured for you, and I direct him to make some demonstration of ownership, and of having acquired the useful and direct dominion, and he, manifesting himself to be the only lord and owner of it, dug up earth, pulled up grass, and threw stones; with which the act was concluded, and I signed with the assisting witnesses, which I certify.

(Signed) INOCENTE GARCIA.

Ass't'g witnesses:
(S'g'd) JOSE GARGIA.
(S'g'd) ENRIQUE TOMSON.

In San Luis Obispo, July 12, 1846.

Let the original official papers be returned to the party interested, that he may make of them the use he may see fit, and as a testimony of acquisition of ownership, and let them be entered in the corresponding book.

(Signed) GARCIA.

SAN LUIS OBISPO, *July 13th*, 1846.

In compliance with the foregoing order, on this day the record of proceedings (espediente) was delivered to Don Juan Wilson in nine folios, and I noted it officially.

42 B.

SAN LUIS OBISPO, *July 11th*, 1846.

To Señora DOÑA RAMONA CARRILLO:

MY ESTEEMED COUSIN: As want of time and my engagements prevented me the satisfaction of going to make you a visit, I direct to you this letter, with the principal object of saluting you affectionately, wishing you perfect health, together with all your family.

I also transmit with this, that you may have the goodness to deliver it to Don Juan, the title of the land which he bought from the Indian Romualdo, which accompanies the act of sale. Be pleased to call the attention of Don Juan to the fact that it was made out in favor of the Indian, because it seemed to me most prudent; he will therefore cause the said Romualdo to transfer to him by an official act, which the magistrate shall make out, but this is only a mere form.

Wishing you may remain well, and dispose of the sincere affection which is professed towards you by your cousin, who is at your feet.

(Signed) PIO PICO,
Ex. C. R. P.

I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office, in case No. 50, John Wilson, for the place named "Huerta de Romualdo," annexed to the deposition of "Pablo de la Guerra."

(Signed) GEO. FISHER, *Sec'y.*

Filed in office February 17, 1852.

(S'g'd) GEO. FISHER, *Sec'y.*

43 *Opinion.*

JOHN WILSON *vs.* THE UNITED STATES. } For the place called "Huerta de Romualdo ó del Chorro," in San Luis Obispo county, containing 1,500 varas square of land.

In the claimant's petition it is alleged that in 1842 the alcalde of San Luis Obispo, by direction and authority of Alvarado, then governor of California, gave to Romualdo (an Indian) the small tract of

land in question, the boundaries of which were established by the alcalde; that Romualdo sold and conveyed it to the petitioner June 27, 1846; that juridical possession was given the next day; that on the tenth day of July, 1846, Pio Pico gave a new and formal grant of said land to said Romualdo; that on the following day Romualdo confirmed his former conveyance to the present claimant, who was immediately again put into judicial possessionof the premises. So far as the allegation that a grant was made to Romualdo, under the direction of Governor Alvarado by the alcalde, is concerned, there is no sufficient proof of the fact. The only evidence of it is found in the certificate of said Alvarado, made long after his official capacity ceased, stating that in 1842, while he was governor, he ordered Bonilla, then in charge of the mission, to distribute to several of the Indians of that mission such separate parcels of land as he might deem proper, proportioning them to the merits and abilities of each one, and putting them in possession immediately, and a like certificate by Bo-
44 nilla, that he had assigned the land in question to Romualdo, and that he had offered to obtain from the government the corresponding title.

These certificates, given long after the official functions of the signers ceased, have no official character which makes them evidence of the facts contained in them. These facts must be sustained by the proper official documents, or oral proof, when evidence of that character is admissable, sanctioned by the solemnity of an oath. These certificates were prepared to be presented to the governor in 1846, when they were made, in order to obtain his grant of the land to Romualdo. They conveyed to that functionary information which was designed to induce him to regard favorably the applicant and the application, and to show the propriety in the exercise of the broad discretion given to the governor in such cases of granting the solicitation. For this purpose they were used. But for the purpose of proving here that a concession or grant of any character was made in 1842 they are incompetent as evidence. The unofficial certificate of a former governor of the acts of his administration cannot take the place of official cotemporaneous documents, or of the solemn oath by which the verity of human testimony is required to be sanctioned. But if these certificates were regarded as legal evidence they are not sufficient to prove a grant of the land by the Mexican government to Romualdo. The alcalde had himself no power to grant; he does not appear to have been commissioned by the governor (even if the latter had power to grant by substitution) to grant. The distribution seems intended as nothing more than a temporary arrangement, evidently contemplating, if grants should be obtained, it should be on the subsequent application of the several beneficiaries to the governor in the usual manner and upon a proper showing. This is evi-
45 dence by the statement contained in Bonilla's certificate that he offered to obtain the grant for Romualdo. No grant was ever obtained, and, in truth, none is pretended to have been procured from any competent authority until that signed by Pio Pico in 1846.

The rights of Romualdo to the land must then depend on the validity of the last mentioned document.

The grant issued in 1846 is presented, and the signatures of Pio Pico, as constitutional governor of the department of California, and José Matias Moreno, as secretary ad interim, which are upon it, are proved to be genuine. Its date is July 10, 1846.

The question whether a grant issued at that date by Governor Pico is valid and entitled to confirmation necessarily arises.

The flag of the United States was raised at Monterey and possession taken of the country on the seventh day of the same month. It was a conquest by our nation from Mexico, then in open war, and the possession held at the date of the grant has never been relinquished by the government.

The respective rights and powers of the two legitimate nations over the public domain, when one possesses itself by conquest of territory belonging to the other, are well settled among writers on international law. By such conquest, and during the occupation under it, the territory passed under the allegiance and sovereignty of our own nation. In the case of the Foltina, (1 Dodson Adm. Rep'ts, 450,) it is said that "No point is more clearly settled in the courts of common law than that a conquered country forms immediately a part of the king's dominion.—(Campbell *vs.* Hall, Cow.
46 R., 208.) In the United States *vs.* Haywood, (2 Gall. R., 485,) Judge Story declared that in case of such occupation by conquest the sovereignty of the conquered nation was, of course, suspended, and its laws could no longer be rightfully enforced or be obligatory upon the inhabitants who remained and submitted to the conqueror.

But although the sovereignty of Mexico by such conquest was thus suspended it had not permanently passed under our sovereignty. In the language of the court in the case above cited, the right which existed was the mere right of superior force; the allegiance was temporary, and the possession not that firm possession which give to the conqueror *plenum dominion et utile* the complete and perfect ownership of property.

While the country was thus held by conquest neither the conqueror nor the government of the conquered territory had the full, unrestricted, and unconditional power of granting the public domain thus held.

The cession of national domain is an act of full sovereignty, and requires in the granting power the union of possession and the right to the territory. A grant made by the conqueror while territory is thus held by conquest is subject to the contingency of the retaking of the territory by the original possessor or its restoration to him at the close of hostilities by the treaty of peace. In that event "the purchaser of any portion of the national domain takes it at the peril of being evicted by the original sovereign owner when he is restored to the possession of his dominion."—(Wheat. Int. L., 441.) The conqueror has the possession of the territory and exercises over it the dominion of sovereign power, but the contingency above men-

tioned reduces his title to something less than that firm and settled ownership which the granting of an indefeasible estate requires.

47 His grant, however, would be subject only to the contingency which in the case from Dodson is denominated "the shadowy right of the former proprietor."—(1 Dodson R., 450.)

The power of the original proprietor of territory thus held under conquest by the enemy is still more restricted possession; the most essential ingredient and the most palpable evidence of full title is wanting. While it is true that the defeated nation may retake the conquered territory, it is equally true that the possessor may retain it if he can, and although the event of the war may restore it to the original owner, it is also certain that the same power which wrenched it from him may be able to dictate terms of peace without restoring the acquisition. A grant made by the original property within territory thus held by consent from him could become good only by the restoration of the territory by re-conquest or by treaty.

Mexico was never possessed of conquered California, but, on the contrary, surrendered all right to it on the termination of hostilities by the treaty of Guadalupe Hidalgo. If this treaty had been silent on the subject of the conquered territory the title of our government to it would have been unquestionable. On the conclusion of war by treaty, if nothing be said about the conquered country or places they remain with the conqueror, and his title afterwards cannot be called in question. But the treaty is not silent on the subject. By it the conquered territory remains with and becomes the absolute property of the Mexican nation, subject only to private rights. According to all the authorities, both foreign and American, the law of post limine is precluded by such a treaty, and no such rights derived from the ceeding nation after the conquest can be valid; (Vattel, 395;—1 Kent, 116; Wheat. Int. Law, 572; The Famia, 5 Robinson's Admiralty Rep., 106.)

The same principle by which, on the cession of such territory to the conqueror by a treaty of peace, titles derived in the mean-

48 time from the conqueror are made perfect, those which are made by the original owner become forever inoperative and void.

The principal above cited, that possession of and the right to the thing granted must exist together in the grantors, in order to constitute a valid grant, is stated by Chancellor Kent to be a necessary principle in the law of property in all systems of jurisprudence, (1 Kent Com's, 150,) and its application to cases of the alienation of national domain is undoubted.

The Supreme Court of the United Stateshave repeatedly declared and applied this principle in a manner which both establishes it as authority and illustrates its application. By the treaty of St. Ildefonso, Spain ceded Louisiana to the republic of France on the first of October, 1800, but did not make formal delivery of possession until December 20th, 1803. In the mean time France, by the treaty of Paris, ceded the same territory to the United States.

The treaty bears date April 30th, 1803, but the delivery of possession was not made until the 20th of the following December.

Between the signing of the treaty of cession by Spain to France and the delivery of possession to the latter, the authorities of the former continued in the exercise of their functions in the province.

The power of those authorities to preserve the peace and order o community, until the new sovereignty took possession, was admitted. A grant of land made by those authorities between the signing of the treaty was declared, nevertheless, to be without authority and void.

The ratification of the treaty of cession was held to be retractive; and thereupon the treaty became binding on the respective parties from the day of signing.

49 In the intermediate space of time, the ceding party had parted with its sovereign right to dispose of its domain to third persons, and its grants thus made were therefore void.

The possession remained in the original owner, but the right to the subject of the cession had been disposed of by cession contract.—(U. States *vs.* Reynes, 9 How. R., 127; Davis *vs.* Police Jury of Concordia, *ib.*, 280.)

And in case of disputed boundaries, grants made by the nation in full possession of territory, ultimately recognized to belong to a coterminous power, have repeatedly been declared to be void—Hencourt *vs.* Guillard, 12 Wheat. R., 528; Henderson *vs.* Poindexter, 12 Wheat. R., 535, 11 Pet. R., 209; Poole *vs.* Fleeger, 12 Pet. R., 521.)

Grants, then, which were made by the Mexican authorities in the conquered country while held by our army, could have become valid in no contingency except by reconquest, or by restoration at the conclusion of hostilities; these contingencies never happened, but, on the contrary, being relinquished to the conqueror by the treaty of peace, all claim of Mexico ceased, and all the contingent grants became null, the right of post limine having ceased forever.

The treaty of Guadalupe Hidalgo guarantees property, and this must be considered as embracing grants from the Mexican government, whether the title under them was complete, or merely inchoate and imperfect. This does not, however, embrace every semblance of title.

The guarantee applies only to rights founded in justice and
50 good faith, and based on authority competent to their creation.—(U. S. *vs.* Reynes, 9 How. R., 651.)

And a grant made after the sovereign power over the territory had been superseded by the conquest of the enemy was not made by competent authority, and is not made good by the treaty.

The grantee of a government whose territory is held by a public enemy must be presumed necessarily to know the defect of his title, and to take it cum onera.

A question of some difficulty arises as to the limits and extent of the territory which was held by conquest at the time of issuing this grant.

We know historically that the American flag was raised at Monterey on the 7th of July, 1846, and the conquest of California pro-

claimed by the officer in command. The whole region of country to the north of this point fell immediately into the undisputed power of the invading forces, but the southern portion of the present State of California was not so soon actually occupied by the American troops.

It can rarely, and perhaps never, happen, in case of the conquest of an extensive province, that every portion of its territory should be occupied by the invading army at once, on the first successful planting of the flag of their nation; some little time must necessarily elapse before every detachment of troops can be dislodged; every town surrender, and every settlement subdued.

Where there is a formal surrender, articles of capitulation, it becomes a difficult question to determine precisely the limits of the territory which can be regarded as conquered. Such territory can, from the nature of the case, have no established and admitted boundaries.

The invasion is a matter of mere force; conquest the result
51 of successful invasion, and the extent of the enemy's country, which must be regarded as conquered, must be that over which he proclaims the authority of a conqueror, from which he expels the authority of the former possessor, and within which he is able to maintain his own.

When the power of the established government in one of its provinces is broken, and fails to protect its citizens from the force of an invading enemy who brings it within the exercise of his own power, commands its resources and establishes the sovereignty of his own flag in place of the former government, the conquest must be regarded as made; and as before the ascendancy of his power the sovereignty of the former government was not annihilated by a casual invasion, or temporary occupation by the enemy of minor points, so the general character of a conquered country is not destroyed by the partial and temporary occupation of unimportant places by their former possessor after the conqueror is fully established, and while the changes incident to a conquest are being made. And a conquest thus made, and fully and permanently maintained, must be regarded, for every purpose connected with the disposition of the public domain, as commencing at the time of the first permanent planting of the standard, and as extending to the whole conquered territory.

On this principle the successful establishment of the power of the American forces in Upper California, on the 7th July, 1846, fixes the date of the conquest anterior to that time; the commandant of the Mexican forces had been in the north, but the north yielded without a struggle, and was at once in the power of American forces, raised chiefly among the inhabitants of the country; a powerful squadron of the American navy was upon the coast, and could command every harbor, and the means of defence possessed by the Mexi-

can authorities were inadequate for any purpose of success-
52 ful resistance. Within five weeks from the first raising of the standard at Monterey, the American forces had marched throughout the territory, and possessed themselves of every town,

and established undisputed authority in every part of the department.

The forces of the enemy in the meantime were scattered, and the chief officers, both of the military and civil government, left the country. The power of the Mexican authorities yielded, and that of the Americans was in the ascendant throughout all California, from the moment of the raising of the flag and the successful occupation of different points by the military force, was the result of the establishmen t of the new soverignty.

But if the question whether the land granted was within the territory conquered at the time of the grant became important, it be necessary to decide how far the conquered territory extended at that date, this would be really a question of territorial boundaries between the sovereignties of the two nations at the date specified, and must be decided on the same principles of other cases of conflicting natural jurisdiction.

Questions of national boundaries have uniformly been held by the Supreme Court of the United States as partaking of political rather than judicial character, and tested by this criterion it is believed that the whole Upper California is embraced within the conquest of July 7.

In the instructions given by the executive branch of our government to Commodore Sloat, then in command of the American squadron on the Pacific, the conquest and occupation of the entire territory of California was in a certain contingency directed.

On the happening of that contingency posession was taken, and his proclamation, dated at Monterey, July 6, 1854, the day before raising the American flag, announced the intended capture of the
53 country, and his determination to carry the standard of the United States throughout California. The subsequent reports and messages of an official character from the executive branch of the government clearly refer to this taking possession of the country as the date of its military occupation. Congress has not, by direct and positive declaration to that effect, fixed the day which is to be regarded as the date of the conquest, but in the act of March 3, 1851, organizing this commission, the 7th of July, 1846, is mentioned in connection necessarily to imply this. The 14th section of that act raises the presumption of a grant in certain cases by the Mexican government, but it expressly limits such presumption of its issuance to the time anterior to the date of raising the flag at Monterey, leaving the unavoidable inference that the power in the Mexican authorities to grant lands ceased throughout California on the happening of that event. The intention of the fourteenth section, in which the limitation occurs, is manifestly of the most liberal character in behalf of those in whose favor the provision is made, and was intended to raise the legal presumption of a grant in every case where a valid grant could, in fact, have been issued by Mexican authority; and by restricting the presumption to the period anterior to the seventh of July, that date seems at least, by necessary implication, to be designated as the time when the power of the Mexican government to make grants was superseded.

Nothing is found in the action of any department of the government tending to recognize the idea that any portion of Upper California was to be regarded as remaining under the sovereignty of Mexico after the first military possession of Monterey, or that it was so claimed by the supreme government of Mexico. And if it had been, that
54 the latter claimed that grants made by the local authorities after that date, in any part of the department, were to be recognized as vested after the cession, they would most assuredly have claimed for such rights a guarantee in the treaty.

The treaty of Guadalupe Hidalgo, as originally signed by the Mexican commissioners, and as transmitted to the United States, contained a solemn declaration on the part of Mexico, that no grants whatever of lands in any of the territories aforesaid has been made since the 13th day of May, 1846.

This article (the tenth) was stricken out by the Senate. If it had been permitted to remain, it would have excluded from recognition all grants of a date subsequent to that mentioned. As the treaty was finally ratified by both parties, without specifying any time when the power of Mexico to grant lands in the ceded territory was to be regarded as ceasing, general and recognized principles of law must be the text by which all doubtful concessions must be determined.

We have already referred to the uniform and repeated decisions of the courts, that no grant made after the signing of a treaty of cession and its ratification by the high contracting powers is void. In Davis *vs.* the Police Jury of Concordia, 9 How. R., 280, it is said by the court that "before the signatures of a treaty, and after negotiations have begun for a cession of territory, grants of land cannot be made in it without being subject to confirmation by the sovereign to whom the transfer shall be made. If the mere negotiations in regard to a cession, the proposition to cede not yet ripened into an undertake to alienate on one part or to receive the cession on the other, deprives the owner of the power to make valid grants, the same want of authority would exist where grants were made of territory just falling into the
55 possession of a conquering foe, and with the evident intention to deprive him of the fruits of his conquest.

The want of good faith on the part of such grantee, as well as on the part of the grantor, would deprive the latter of the right of a bona fide purchaser. If such title would be valid as against the successful belligerent power, the defeated nation need but send its agent with its retreating army, and as the foe carried his conquering standard from district to district deliver to the individual subject title deeds of the territory, at the moment when its conquest became inevitable, and retiring give place to the advancing army. Such titles, I apprehend, have never been regognized, on the cessation of hostilities, as defeating the recognized rights of the conqueror, or establishing individual's titles, which on the restoration of peace would be regarded as valid, without an express treaty provision for their recognition.

If the conquest of the whole of California was not to be regarded as made on the day of the taking possession of the country on the 7th

of July, we know of no criterion by which the date of the conquest of its several portions could be determined. As to an isolated point, fort or seaport town, the time might well be known, but as to the broad plains, the sequestered valleys, and the mountain ranges in the interior, sparsely settled and but little known, it would be impossible to make a distinction, and the attempt in adjudicating the validity of the grant, depending on the question at their date, would lead to insurmountable difficulties.

From the view which we have taken of the question we deem no such effort necessary.

A consideration of the law and the facts presented brings us to the conclusion.—

56 1st. That grants made by the Mexican authorities after the date of the conquest are not protected either by the law of nations or the treaty of Guadalupe Hidalgo, and cannot therefore be confirmed.

2d. That the conquest of California was accomplished at the taking possession and raising of the American flag at Monterey, on the 7th day of July, 1846.

3d. That this conquest must be considered as embracing the whole territory of Upper California.

4th. That, therefore, the power of the Mexican government to grant land within any portion of California ceased at that date, and grants in suits subsequently to that event are invalid.

Filed in office Dec'r 12, 1854.

GEO. FISHER, *Sec'y.*

Decree.

57 JOHN WILSON
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid; and it is therefore decreed, that this application for a confirmation thereof be denied.

(Signed) ALPHEUS FELCH,
(Signed) R. AUG. THOMPSON,
(Signed) S. B. FARWELL,
Commissioners.

Filed in office Dec'r 12, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that the transcripts of the proceedings, and of

the decision in this case, and of the papers and evidence upon which the same are founded be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the U. S.

58 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certifythe foregoing fifty-five pages, numbered, from 1 to 55, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 50 on the docket of the said board, wherein John Wilson is the claimant against the United States for the place known by the name of "Huerta de Romualdo."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Franciso, California, this thirtieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER. *Sec'y.*

Filed July 12th, 1855.

C. E. CARR, *Clerk.*
By A. H. CLARK, *Deputy.*

59

60 *Notice of appeal.*

United States district court for the southern district of California.

JOHN WILSON, appellant, *vs.* THE UNITED STATES, appellee. } No. 261. Notice of intention to prosecute the appeal from decision of U. S. land commission.

John Wilson, claimant of the land called "Huerta de Romualdo," situate in the county of San Luis Obispo, in the southern district of California, hereby gives notice of his intention to prosecute an appeal from the decision of the board of commissioners in his claim for the land, which claim was presented to the said board of commissioners and by them rejected; his claim being that which is numbered on the docket of said board No. 50. The transcript is filed in this office, is numbered No. 261.

HALLECK, PEACHY, & BILLINGS,
Att'ys for Appellant.

Filed Sept. 22d, 1855.

C. E. CARR, *Cl'k.*
By JOHN W. ROSS, *Dep'ty.*

Petition.

United States dist. court for the southern district of California.

JOHN WILSON, appellant, *vs.* THE UNITED STATES, appellee. } No. 261. Petition of appellant praying the court to review the decision of the U. S. board of commissioners.

Your petitioner, John Wilson, respectfully shows to this honorable court that, on the 17th of February, 1852, he presented his claim to the tract of land called "Huerta de Romualdo, &c.,"
61 to the United States board of land commissioners while sitting as a board, praying the said board to confirm to him the said land, as is more particularly described in said petition, and the documentary and other evidence in the case, all of which is hereby referred to and made a part of this petition; that on the 12th day of December, 1854, the said board of commissioners decided upon the validity of said claim of the petitioner and rejected it; that the transcript of said case was filed in the office of the clerk of the district court of the southern district of California, on the 12th day of July, 1855, and that appellant's notice of intention to prosecute appeal was filed in said office on the 22d day of September, 1855; and your petitioner further shows that the aforesaid tract of land is situate in the southern district of California, and he prays this honorable court to review the said decision of the said board of land commissioners and to reverse it, and to confirm to the petitioner his title to the said tract of land.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellant.

Los Angeles, Sept. 22d, 1855.

Filed Sept. 22d, 1855.

C. E. CARR, *Cl'k*,
By JOHN W. ROSS, *Dep'ty.*

62 *Order to take additional testimony.*

In the United States dist. court for the southern dist. of California.

JOHN WILSON, appellant, *vs.* THE UNITED STATES, appellee, } No. 261.—Transcript No. 50.

On motion of H. W. Halleck, of counsel for appellant, ordered that additional testimony may be taken by either party in the above-entitled cause.

Filed Oct. 9th, 1855.

C. E. CARR, *Cl'k.*

Ans. of U. S. dist. att'y.

In the district court of the United States for the southern district of California.—Hon. Isaac S. K. Ogier, judge.

JOHN WILSON, appellant,
vs.
THE UNITED STATES, appellee, } No. 261.—Transcript No. 50.

The answer of P. Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of John Wilson for a review of the decision in said case of the board of United States land commissioners while sitting as a board, says: That he denies all and singular and every allegation in said petition contained. And further, this respondent denies generally the validity of the alleged title of the claimant to the land claimed by him, and the said respondent prays that this hon'l court will affirm the decision of the said United States land commissioners,
63 and decree the said alleged title to alleged tract of land to be invalid, and general relief.

P ORD,
District Attorney of the United States for the Southern District of California.

I have served this answer on Billings. att'y for John Wilson, by delivering to him a true copy of the same at Los Angeles, Dec. 28th, 1855.

EDWARD HUNTER,
U. S. Marshal,
Per M. L. GOODMAN,
Deputy.

Filed Dec. 27th, 1855.

C. E. CARR, *Cl'k.*

Order to take additional testimony.

Dist. court south'n dist. of Cal'a, U. S. A.

THE UNITED STATES
vs.
JOHN WILSON.

On motion of F. Billings, of counsel for claimants, it is ordered that either party may take further testimony in the above-entitled cause.
Jan'y 6, 1856.

Filed Jan'y 7th, 1856.

C. E. CARR, *Cl'k.*

64 *Deposition of J. M. Bonilla.*

Deposition of José Mariano Bonilla, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Wednesday, the 14th day of January, A. D. 1857, at o'clock, p. m., on behalf of the appellant, by consent and agreement of parties, to be used in testimony in a certain cause now pending in the United States district court for the southern district of California, being case No. 261 on docket of said court, wherein the United States are appellee and Juan Wilson is appellant.

Present: P. Ord, U. S. dist. att'y, on behalf of the appellees, and Halleck, Peachy and Billings, att'ys for appell'ts.

JUAN WILSON, appellant, *vs.* THE UNITED STATES, appellee, } No. 261.—"Huerta de Romualdo," or "El Chorro."

José Mariano Bonilla, a witness on the part of the appellant, being duly sworn, deposes and answers as follows:

Quest. What is your name, age, and place of residence?

Ans. My name is José Mariano Bonilla; am 51 years of age; and reside in San Luis Obispo county.

Quest. Do you know the place called "Huerta de Romualdo, ó El Chorro;" if yea, where is it situated, and how long have you known it?

Ans. I know it; it is situated on the northwest of the mission buildings of San Luis Obispo, distant from the same about one league and a half. It is on the west side of the road called the coast road, going from San Luis Obispo to the coast. The road passes upon the edge of it, the greater portion of the land lying to the west of it.

65 This huerta is well known, and is so much so that it cannot be well mistaken; I have known the same since 1841.

Quest. What office did you hold, if any, under the Mexican government in the year 1842?

Ans. I was alcalde in San Luis Obispo, and was also empowered to distribute lands to the Indians, which power was a special one.

Quest. As such officer, did you receive any order or orders from the governor of California relative to the granting of lands in San Luis Obispo to the Indians? If yea, were those orders in writing? If in writing, can you produce them? and if not, state what has become of them.

Ans. I did receive such an order, dated on the 9th September, 1842, from the government of California, and the same was in writing. It was from Governor Alvarado, which said order was deposited in the alcalde's office. In 1846 Col. Frémont passed through San Luis Obispo, from which time all public records of the alcalde disappeared, or were destroyed. I have searched for this and other public papers since that time in the alcalde's office, and in other government offices, and have been unable to find it, nor do I know it to be in existence.

received various orders whilst alcalde upon the subject of the distribution of lands, but the one of which I have spoken had reference to those previous orders, and directed in a definite manner how the lands should be distributed and the pueblo founded. In the order of distribution the Indians were particularly mentioned. The order was directed to me as alcalde of San Luis Obispo.

66 Quest. State, as near as you can recollect, the contents of said order.

Ans. The order said, you will distribute suertes of land to the Indians according to their respective merits and the number of their families and their services, with the conditions that they would cultivate the lands and should fence the same and not alienate it. The order also directed that after I should have measured the same, to give them a paper that might serve them as a title. The lands that were to be divided among the Indians were the lands of the mission, wherever the Indians might select them.

Quest. Did you know Romualdo? Who was he, and where did he live?

Ans. I did. He was a very old Indian, much favored by the mission and the government for his long services. He lived on this place called "Huerto de Romualdo." I knew the Indian since 1841. He was on the place when I first knew him, and continued there till 1843, at which time he left his family on that place and went to work for Governor Alvarado. I think he died about the year 1845. I do not remember the exact date of his death. After his death his widow continued to reside on the same place. The time he worked for Alvarado was but a few months. The widow, as I understood, sold the place to Juan Wilson, but continued to live there till she died.

Quest. State what you did under the order you have mentioned, particularly so far as the Indian Romualdo was concerned.

(Objected to by U. S. att'y.)

67 Ans. I did not immediately give Romualdo the land he wanted, as I did the other Indians, because his land was of greater extension than that which I gave the others. The land which he wanted was the "Huerta," where he lived. The Indian Romualdo afterwards brought me a special order from Governor Alvarado, dated in same year of 1843, (I do not remember the month,) which order directed me to put Romualdo in possession of the entire extension of the "Huerta" upon which he lived.

(Answer objected to by U. S. att'y.)

Quest. Were you acquainted with the handwriting of Gov. Alvarado? Was the said special order signed by him in his own handwriting, and what has become of the order?

Ans. I know his handwriting and his signature. This special order was signed by him with his genuine signature. The said order was lost, as all the other archives of San Luis Obispo. This order was deposited in the archives of San Luis Obispo. I have examined for it and cannot find it.

Quest. Now, state more particularly the words, if you can; if you cannot the words, then the substance of this special order.

Ans. The special order contained a recommendation of the particular good conduct of the Indian "Romualdo," and that I should put him in possession of his "Huerta," declaring him to be the proprietor thereof. The order declared that I should concede to him the land as the owner thereof.

Quest. State what, if any, conditions were in this second order?

Ans. It had no condition.

Quest. State what you did with this special order.

68 (Objected to by U. S. att'y.)

Ans. I went with the Indian Romualdo upon the land and measured and gave him possession of it; and I also gave him a paper of possession, and informed him that it was his.

Ques. To what land do you refer?

(Objected to by U. S. att'y.)

Ans. The Huerta of Romualdo.

Ques. Did you give the Indian Romualdo any title paper?

(Objected to by U. S. att'y.)

Ans. I did not; he would not receive, because the Indian had said that the governor himself had offered to give him the title to the land.

Ques. Did you make any note or record of the transaction in the records of your office? If yea, what, and what has become of the records?

Ans. In the book of records that I kept of all the possessions of lands given to Indians I also noted this transaction. This book of records is lost with the other archives of which I have formerly spoken.

Ques. Describe particularly the land that you say you measured, and of which you say you gave possession to the Indian.

(Objected to by U. S. att'y.)

Ans. The land is situate northwest from the houses of the mission of San Luis Obispo, one and a half leagues distant. It is one thousand varas in length, little more or less; and three hundred varas in width, a little more or less. It is wider in some places than

69 in others. It is bounded on the northwest by the arroyo called "El Chorro;" on the northeast by the lands of an Indian, called Pedro Maria; on the south and southwest by the "Cerritos." On the northwestwardly there is a row of sycamore trees on an arroyo at the foot of the hill.

Quest. What marks the boundary line between the Huerta and the lands of Pedro Maria?

(Obj't'd to by U. S. att'y.)

Ans. When I measured the line there was a fence there, but at each extremity of the line there were two trees; they are marked oak trees, and none other is near them.

Quest. State if this Huerta was fenced at the time you gave possession; and if so, has it continued to be so?

(Obj'd to by U. S. att'y.)

Ans. This line between the Huerta and the Indian Pedro Maria was the only one that was fenced, being by nature fenced on the other sides by arroyo and cerritos. The fence is not existing now.

Quest. How is the land called "Los Osos" situated in reference to this Huerta, and what separates it from the Huerta?

(Objected to by U. S. att'y.)

Ans. It is adjoining the Huerta on the west side, and is separated by the "Cerritos" that I have mentioned, which continue on to the arroyo.

Quest. To whom are the "Los Asos" reputed to belong?

Ans. John Wilson.

Ques. Did the Indian have a house on this land and cultivate it from the time you gave possession?

Ans. Yes; he had a house, and cultivated the land. When
70 I knew it in 1841 he had a pole house on it, in which he lived with his family. He cultivated about one-fourth of the land, which said portion cultivated was immediately adjacent to the house.

Ques. What was the paper of possession that you say you gave to the Indian?

(Obj'd to by U. S. att'y.)

Ans. It was the measurement of the land and describing the monuments of the boundary.

Ques. Have you ever seen the paper since, or do you know what has become of it?

Ans. I have never seen it since, but think the Indian lost it, because he applied to me for a certificate, which I gave him. The Indian did not say that he had lost it; he only asked for that certificate. I gave the certificate after I was out of office. I did not give him a certified copy of the original paper, because I was out of office, and could not give a certified copy of it. I do not know what became of that certificate, as I never again heard of it.

Ques. State what the record in your office—which you say you made when alcalde—connected with this matter set forth.

Ans. It contained a copy of possession; this was all that that book contained on the subject. The other separate orders relative to this matter were filed in the office in their respective places.

Ques. Who is the present occupant of the Huerta; how long
71 has he so been; and in what manner has he occupied it?

Ans. John Wilson is the present occupant, and has been so since the year 1846 (I think.) He has cultivated a portion of the land which is fenced. He has a house on the same and grazes a flock of sheep on the portion of it.

Cross-examination by U. S. att'y.

Ques. What quantity of the land did you distribute to the Indians of the mission of San Luis Obispo in 1842? Where was the land situated, and what was the extent in varas of the "suertes" given to each Indian?

Ans. About two miles of land immediately contiguous to the garden of the mission, and about another mile at different points where they had previously their houses and gardens. I gave them in con-

formity to the size of their families, the maximum of the concession being two hundred varas, and the minimum one hundred varas.

Ques. What was the size of Romualdo's family in 1842?

Ans. It consisted of his wife and adopted son.

Ques. Did the special order that you say you received from Alvarado in the year 1842, directing you to give possession to Romualdo, specify or limit the quantity of land which you were to concede to him?

Ans. No; the special order said, put him in possession of the land known as the Huerta of Romualdo.

Ques. Do you or not know whether Gov. Alvarado ever is-
72 sued and delivered to Romualdo a title to this land?

Ans. I do not know.

J. MAR'ANO BONILLA.

Sworn to and subscribed before me this 15th day of Jan'y, 1857.

C. SIMS,
U. S. Com'r.

UNITED STATES OF AMERICA,
State of California, County of Los Angeles, ss:

I, C. Sims, United States commissioner for the districts of California, do hereby certify that the foregoing deposition of José Mariano Bonilla was taken before me, in accordance with the request and agreement of the said attorneys, at the United States court-house in the city of Los Angeles, State of California, on behalf of the appellant; that the said José Mariano Bonilla was by me duly sworn, according to law, as a witness in said cause in the caption of this deposition mentioned; and after being so sworn, his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, and by him corrected as he desired, was by him signed in my presence.

In witness whereof, I hereto set my hand and affix my
[SEAL.] private seal, (having no seal of office,) this 15th January, A. D. 1857.

C. SIMS, *U. S. Com'r.*

Filed this 15th January, 1857.

C. SIMS, *Cl'k,*
Pr. J. H. COLEMAN, *Dep'ty.*

73 *Affidavit of John Wilson.*

United States district court, southern district of California.

THE UNITED STATES, appellee,
vs.
JOHN WILSON, appellant.
} No. 261.—Trans. No. 50.

I, John Wilson, on oath say, that I am the claimant in this case; that I purchased the land in 1846 of the Indian Romualdo; that no

paper connected with the title or possession of said Romualdo of the land has ever come to my possession or sight, save those papers which appear in the transcript. The Indian Romualdo died in 1846, and his wife in 1848. Neither left any papers that I am aware of; if they did, I know not where they are, or what has become of them. I have made diligent inquiry for the paper of possession given by Alcalde Bonilla to Romualdo in 1842, but cannot find it; don't know where it is, and believe it is lost.

JOHN WILSON.

Subscribed and sworn to before me this 19th day of January, 1857.
C. SIMS, *U. S. Com'r.*

Filed Jan'y 19th, 1857.

C. SIMS, *Cl'k.*

74 *Decree.*

In the United States district court within and for the southern district of California.—December term, 1856.

Hon. Isaac S. K. Ogier, judge.

THE UNITED STATES, appellees,
vs.
JOHN WILSON, appellant. } No. 261.

Transcript from the board of land commissioners, No. 50.

This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and decision of said board, and the documentary and other evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board of land commissioners, declaring invalid and rejecting the claim of the appellant, John Wilson, to the land set forth and described in his petition to said board, and in the documentary and other evidence in this case, be, and the same is hereby, reversed; and it is further ordered, adjudged, and decreed, that the title of the appellant, John Wilson, to the land so claimed by him is a good and valid title, and that his claim to said land be, and the same hereby is, confirmed. The land of which confirmation is hereby made is situated in the county of San Luis Obispo, is known by the name of "Huerta de Romualdo," or "El Chorro," and is in quantity a thousand varas,
75 a little more or less, in length by about three hundred varas in width, and bounded by the Arroyo del Chorro, the line of the Indian Pedro Maria, and the hills (los Cerritos) according to the juridical possession given to said John Wilson, on

the 28th day of June, A. D. 1846, and the deposition of J. M. Bonilla, taken in this case, to which juridical possession and deposition reference is had in aid of said description.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal'a.

Filed Feb'y 9th, 1857.

C. SIMS, *Clerk.*

Order of appeal.

United States district court, southern district California.—Regular December term, A. D. 1856—February 24, A. D. 1857.

Hon. Isaac S. K. Ogier, judge.

JOHN WILSON, appellant,
vs.
THE UNITED STATES, appellee. } No. 261.

On motion of P. Ord, U. S. dist. attorney, it is ordered that an appeal be allowed the United States in this cause.

76 United States district court, south'n dist. Cal'a.

CLERK'S OFFICE, MONTEREY.

I, John O. Wheeler, clerk of the United States district court for the south'n dist. Cal'a, do hereby certify the foregoing seventy-five pages, numbered from 1 to 75, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, of the documentary evidence and testimony of the witnesses upon which the same is founded, on file in my office, in case No. 261 on the docket of said court, wherein Juan Wilson is the claimant against the United States for the place known by the name of "Huerta de Romualdo."

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Monterey, this the 30th day of June, A. D. 1863.

[SEAL.]

JOHN O. WHEELER,
Cl'k U. S. Dist. C't S. Dist. Cal'a.

1839